

FBI predisposed to crime

Barbara Boyd presents legal testimony that in the Abscam case of Rep. John Murphy, informants and FBI agents threw out the "safeguards."

On April 22nd, Michael Tigar and Sam Buffone, the attorneys for former Congressman John Murphy of New York, testified in the House Judiciary Committee's ongoing probe of FBI misconduct in the Abscam investigations. Congressman Murphy, a principal target of Abscam, was convicted by a jury in New York of receiving gratuities and of conflict of interest.

The testimony provided by his attorneys demonstrates that John Murphy was entrapped by the FBI in Abscam, and that any American court acting in accordance with the Constitution would have thrown out the charges against him prior to trial. The FBI had no evidence of Murphy being predisposed to bribery or criminal conduct prior to his political targeting in Abscam, and the Congressman was seduced into the Abscam meeting by two con men, Mel Weinberg and Howard Criden. No records were kept of what Weinberg and Criden told Murphy about the purpose of the meeting, and in the meeting itself it remained wholly ambiguous as to whether Murphy was engaging or being asked to engage in criminal conduct.

Yet a jury and a federal judge, George Pratt, allowed Murphy to be convicted, based upon sensational media coverage of the stings and manipulated videotape evidence designed to elicit the jury's opinion that Murphy was subjectively involved in crime through the Abscam meeting.

Subjective definition of crime is a legal standard which enjoyed historic prominence in the Nazi criminal justice system. It is alien to the United States, where formerly the definition of crime rested on objective acts—the criminal had to demonstrate he knew he was committing a crime or engage in conduct clearly showing predisposition, and to consummate the criminal act.

The Buffone-Tigar testimony demonstrates that FBI Director Webster and Assistant Attorney General Philip Heymann were lying to Congress when they testified that rigorous safeguards were in place to prevent just the type of entrapment which occurred in the Murphy case. The safeguards were allegedly designed to ensure that only Congressmen who had demonstrably shown a predisposition for criminal conduct would be brought to the

sheiks, that evidence of this predisposition would be recorded by the con men prior to authorization of a sting, and the ultimate videotape would show the Congressman clearly engaging in criminal conduct. Therefore, they argued to congress, no entrapment could take place.

In reality, con men Weinberg and Criden kept no records of their lying inducements to the videotaped meetings, and the videotapes themselves were cynically manipulated by the prosecution to produce maximum subjective impact on the jury. Webster, in subsequent newspaper interviews after his congressional testimony, backtracked about the alleged objective safeguards provided by the FBI. He stated that protection against entrapment was provided by the fact that the Abscam proposals for meetings with Congressmen from constituents, constituents who were in reality FBI agents, were "sleazy" proposals. Therefore, any Congressman who would appear at such a "sleazy" meeting, according to Webster, had inherently shown "criminality." Tigar and Buffone rightly characterize this subjective judgment by the FBI Director as an attack on representative government itself.

Excerpts from the testimony follow.

We thank the Subcommittee for the opportunity to appear and present testimony on the important constitutional implications of the investigative techniques used in the Abscam operation. Our testimony today will be directed principally at an analysis of testimony presented by FBI Director William Webster and then-Assistant Attorney General Philip B. Heymann at oversight hearings before this committee on March 4, 1980.

Following the unprecedented press leaks in early February, 1980, of the Abscam investigation, members of the Subcommittee expressed concern about possible constitutional implications of the investigative tactics reported in the press. Mr. Webster and Mr. Heymann presented extensive testimony and assured the Subcommittee that a series of precautionary steps, enforced by an elaborate review procedure, had been utilized throughout Abscam to ensure that the potential for

constitutional violations was minimized.

Our law firm has represented former Congressman John M. Murphy from the time of the press leaks through his currently pending appeal. . . .

In Abscam virtually unlimited prosecutorial resources and state of the art technical innovations were concentrated on the single task of creating a piece of video-tape evidence that would demonstrate the receipt of a bribe by the congressional targets. Despite these elaborate efforts and the continued affirmation by the Department of Justice and the FBI of the inherent reliability and accuracy of this videotaped evidence, a jury acquitted Congressman Murphy of bribery. Although he was convicted of the lesser substantive offenses of receipt of a gratuity and conflict of interest, we believe and have so argued in his appeal that the intentionally or recklessly created ambiguities in the videotaped evidence of the bribe offer to Congressman Murphy resulted in his unjust and unfair conviction of these crimes.

In their March 4, 1980 testimony, both Mr. Heymann and Mr. Webster recognized the inherent dangers and constitutional implications of an undercover operation directed at political officials. . . .

A series of safeguards was designed to ensure that an unwitting, innocent person would not be brought before the video cameras and placed in a compromising situation. One safeguard was said to be the careful evaluation of any information provided by middlemen regarding the predisposition or willingness of a third party to engage in a crime. . . .

A further restraint on the middlemen was believed to be their desire to please their supposed criminal confederates who were really FBI agents. Under this reasoning, the middlemen would only bring in those prepared to commit crime since they had been instructed to only produce such individuals and would have lost face by producing unwitting third parties. . . .

Director Webster and Mr. Heymann testified that the principal protection against unscrupulous middlemen was the management of the transaction by the undercover FBI agents before the secret videotape cameras. The primary safeguard was thought to be a clear and unambiguous offer of criminality. . . .

Director Webster further testified that the targets would be required to make statements and give assurances on camera of their desire to engage in the criminal conduct and "to take the money personally, so that there could be no opportunity for the middlemen, or at least minimize opportunity for the middlemen to mislead the public official as to the purpose of that visit."

A review procedure was designed to ensure that these safeguards were implemented and the risk of innocent involvement held to a minimum. . . .

On October 20, 1979, undercover FBI Agent Anthony Amoroso, informant Melvin Weinberg and middle-



Rep. John Murphy

man Howard Criden met with Congressman Murphy at the Hilton Inn at JFK Airport. The events leading up to his meeting and its conduct offer compelling evidence of the failure of the safeguards, guidelines and review system testified to by Mr. Webster and Mr. Heymann.

Prior to the Murphy meeting, warning signs were repeatedly generated that informant Melvin Weinberg and middleman Howard Criden were out of control and were systematically subverting the safeguards and guidelines. . . .

The inherent untrustworthiness of the government's star informant Melvin Weinberg need not be brought to this Committee's attention. Mr. Weinberg was by admission a convicted felon and an individual who had devoted his entire life to crime. He considered himself a consummate con man and showed no remorse for his past activities.

Middleman Howard Criden came to Abscam with a far less tarnished reputation. He had been a former prosecutor in the Philadelphia area and was a respected member of the bar there. Mr. Criden became fully corrupted during the course of the Abscam investigation and signs of his progressive unreliability should have been evident to all involved.

A graphic illustration occurred in September of 1979 when Ellis Cook, Criden's law partner, attempted to scam the undercover agents by impersonating an Immigration and Naturalization Service official, Mario Noto, in an attempt to obtain a \$50,000 bribe. This crude impersonation attempt was reported to FBI officials and to the Department of Justice. In addition, Criden and other middlemen had been responsible for the presentation before the video cameras of numerous officials,

including Senator Pressler, Congressman Patton, State Legislator Musto and Chairman John White of the Democratic National Committee, who were unwitting props for the middlemen. A review of the tapes of these meetings indicates that each of these gentlemen had obviously been told little about what was going to happen at the meeting and had no understanding that any criminal conduct would transpire.

. . . In sum, by October of 1979, the investigation had degenerated to the point where key FBI and Department of Justice officials testified in the New York due process hearings that their only concern was whether congressmen would be brought to meetings. . . .

In the Washington office, supervisory agent Wilson of the FBI testified that in the final analysis if a middleman was able to bring a congressman to a meeting with the undercover agents, it was not considered an issue whether the middlemen had lied or misrepresented the facts in arranging the meeting. . . .

It is apparent that as of October 16 Weinberg knew that Criden had done no more than attempt to arrange a meeting with Murphy, had demonstrated almost complete ignorance of Murphy's background, and certainly did not know Murphy well, if at all. Despite this total lack of information, Good and Puccio were able to transmit a telegram to FBI headquarters in Washington indicating that Murphy had agreed to meet with the sheik's representatives and accept a bribe. On October 17, following the transmittal of the memo to Washington, Criden again spoke to Weinberg to make final arrangements for the meeting. In a candid statement of how he intended to deal with Murphy, Criden said, "I need a day or two, you know. I've got to coach these guys. I've got to make them feel at ease. I've got to, you know, give them the bullshit. . . ."

The protections posed by Director Webster and Mr. Heymann were stripped away from the Murphy transaction one at a time. He was produced based on information of an unreliable middleman. There was no effort to verify the information provided by the middleman and the FBI review process proceeded on the basis of no information. No attorneys were present to monitor the transaction and Agent Amoroso was permitted to proceed with total discretion. Amoroso, contrary to Webster's testimony, had not been instructed on the law of entrapment or the elements of the offenses involved. No clear and unambiguous offer of criminality was made and no other indication was given to Congressman Murphy of the illegal nature of the meeting. The final and perhaps most rudimentary protection was stripped away when the concealed briefcase which contained the \$50,000 was passed to Howard Criden rather than Mr. Murphy. At a minimum, a party who was passed money or was aware that money was being passed would suspect some criminal conduct.

Prior to the Murphy meeting, memoranda documenting high-level Justice Department and FBI meetings indicated concerns by both Director Webster and Mr. Heymann that just such a transaction could occur. On several authorization requests and approval memos, FBI officials, including Director Webster, had indicated that a bribe should be paid only if the money were passed directly or personally to the congressional target.

Director Webster and Mr. Heymann conducted a high level meeting of Abscam officials on October 17, 1979, three days before the Murphy meeting. In a memorandum describing the meeting, four concerns of Webster and Heymann were reported: (1) the issue of entrapment, (2) the need for a new scenario, (3) the need for some type of overt act by the legislators that are bribed, and (4) the necessity of knowing whether or not these legislators have committed previous similar violations.

Despite these clear expressions of concern, Agents Good and Amoroso indicated that this information had never been transmitted to them.

The constitutional problems raised by the absence of these safeguards and guidelines or an effective review process are compounded by an additional element of the testimony provided by Director Webster and Mr. Heymann. Both testified that a principal benefit of sting operations was its deterrent effect on similar future conduct. During the conduct of the Murphy trial, the prosecution repeatedly emphasized the supposed impropriety of any congressman meeting with individuals such as a sheik's representatives in a location like a hotel room at the Kennedy Airport. Director Webster himself has commented on the sleazy nature of the meeting and the indication of criminality that he perceives in anyone who would even attend such a meeting. These positions indicate a fundamental insensitivity to the basic nature of our representative form of government. I am sure that each member of this Committee has on many occasions met with constituents and others interested in the affairs of government in diverse locations, including school rooms, airports and hotel rooms. Indeed, a substantial question would be raised about the unwillingness of a congressman to meet with individuals billed as wealthy investors interested in encouraging economic development in his district.

The lesson of Abscam is clear. A congressman who makes himself accessible to all those who may seek his aid or advice, no matter how unknown or how unimportant or how unorthodox the site of the meeting, will expose himself to potential ridicule and embarrassment.

This problem was further compounded by the government's reliance in the Murphy prosecution on circumstantial evidence of his contact with other congressmen as an indication of guilt. The prosecutor in his summation emphasized routine contacts between Murphy and Thompson, as evidence of a criminal conspiracy.